

**Congress of the United States**  
**Washington, DC 20515**

October 14, 2014

The Honorable Cheryl LaFleur  
Chairman  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

Dear Chairman LaFleur,

We are writing regarding the Federal Energy Regulatory Commission's (FERC) recent consideration of ISO New England's (ISO-NE) filing for certification of the results of the eighth Forward Capacity Market Auction (FCA8) and to express concern about the Forward Capacity Market more generally. On behalf of the ratepayers across New England, we respectfully encourage FERC to rehear and further evaluate the results of FCA8, held on February 3, 2014, in order to definitively determine whether the auction complied with the just and reasonable standards as regulated by the Commission. We further ask that FERC work with electricity stakeholders in New England to engage in a fundamental reexamination of capacity market rules and to consider alternatives that are less costly to ratepayers, drive investment, and produce competitive price outcomes.

The Forward Capacity Market, a market administered by ISO-NE and overseen by FERC, is designed to provide price signals to ensure that the region has adequate electrical generating capacity to meet future needs. The Federal Power Act (FPA) provides FERC the authority to regulate rates, terms, and conditions for interstate electricity transmission and wholesale electricity sales. To do so, the Commission uses a just and reasonable standard in determining whether a filing is cost- and market-justified. This process includes ensuring the rates, terms, and conditions are not unduly discriminatory or preferential.<sup>1</sup>

FCA8 was the first time an auction concluded with a capacity shortfall, caused largely by announced retirements of a number of generating sources, including the 1,500 MW Brayton Point Power Station.<sup>2</sup> In June 2014, FERC found the initial filing of ISO-NE for FCA8 to be deficient and requested more information prior to further action.<sup>3</sup> After ISO-NE provided further information, FERC was unable to make a conclusive determination on the filing, even though the additional information alluded to potential market misconduct.<sup>4</sup> Unfortunately, the lack of action by FERC allowed the results of FCA8 to become effective.<sup>5</sup> The statements related to effective operation of FCA8 that the four sitting FERC Commissioners issued fail to clarify the interpretation and application of the just and reasonable standard and the desired next steps.

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<sup>1</sup> 16 U.S.C. §824d.

<sup>2</sup> Brayton Point Non-Price Retirement Election Notification to ISO-NE. [http://www.iso-ne.com/genrtion\\_resrcs/reports/non\\_prc\\_retremnt\\_ltrrs/2013/brayton\\_letter\\_to\\_iso\\_ne\\_1\\_27\\_14.pdf](http://www.iso-ne.com/genrtion_resrcs/reports/non_prc_retremnt_ltrrs/2013/brayton_letter_to_iso_ne_1_27_14.pdf)

<sup>3</sup> FERC Issuance 20140627-3056. Request for Additional Information. June 27, 2014.

<sup>4</sup> ISO-NE response to FERC request for information. Public Version. July 17, 2014.

<sup>5</sup> FERC Issuance 20140916-3065. Notice of filing taking effect by operation of law. September, 16, 2014.

According to the U.S. Energy Information Administration, in 2013, New England consumers and businesses paid the highest average retail electricity prices in the continental U.S. at 14.48 cents/kWh, 1.58 cents/kWh higher than the next most expensive region.<sup>6</sup> Utility companies in New England are already planning substantial additional rate increases heading into the 2014-2015 winter.<sup>7</sup> The results of FCA8 will further compound the pain for New England ratepayers three years from now. With the FCA8 auction price clearing \$3.05 billion, the starting price for operating year 2017-2018 is well above the previous high of \$1.77 billion in 2009.<sup>8</sup>

The results of FCA8 are even more troubling when put into the context of the previous capacity auctions. For the first seven FCAs, the closing price was the auction floor price.<sup>9</sup> In FCA8, there were fewer megawatts participating in the auction than the level needed to meet the region's anticipated need, an uncompetitive situation in which the clearing price in the auction had to be set administratively. The forward capacity market was designed to incentivize investment and healthy competition in the market, yet after eight years of capacity market auctions, there has not been an FCA in which a free, competitive market established the forward capacity price. Further, the \$3.05 billion in capacity payments set to be awarded through FCA8 will mostly go to existing generators.<sup>10</sup> It remains entirely unclear whether these huge capacity payments are the appropriate mechanism to provide the stable, predictable revenue streams necessary to encourage suppliers to build new capacity.

Lack of FERC action provides no certainty regarding the process leading up to and results of FCA8 or the efficacy of the Forward Capacity Market moving forward. For the sake of good governance, adequate transparency, implications on New England ratepayers, and clarity in the energy industry, we believe FERC must conclusively rule on the results of FCA8 and strongly encourage FERC to hold a rehearing as soon as practical with five sitting FERC Commissioners. We further request FERC's assistance in fundamentally reexamining whether New England's forward capacity market is the most effective way to address electrical capacity concerns and whether less costly and more direct alternatives should be adopted.

Thank you for your consideration of our request. We look forward to hearing from you and stand ready to assist.

Sincerely,



Joseph P. Kennedy, III (MA-04)  
Member of Congress



Edward J. Markey (MA)  
U.S. Senator

<sup>6</sup> Electric Power Monthly with Data for December 2014. Table 5.6B. U.S. Energy Information Administration. February 2014. [http://www.eia.gov/electricity/monthly/current\\_year/february2014.pdf](http://www.eia.gov/electricity/monthly/current_year/february2014.pdf)

<sup>7</sup> "Electric rates in Mass. set to spike this winter." The Boston Globe. September 25, 2014. <http://www.bostonglobe.com/business/2014/09/25/national-grid-projects-percent-increase-for-winter-electricity-rates/MB181NGxTljzr56PZCD7QK/story.html>

<sup>8</sup> ISO-NE Press Release. February 5, 2014. [http://www.iso-ne.com/static-assets/documents/nwsiss/pr/2014/fca8\\_initial\\_results\\_02052014.pdf](http://www.iso-ne.com/static-assets/documents/nwsiss/pr/2014/fca8_initial_results_02052014.pdf)

<sup>9</sup> ISO-NE Press Release, February 28, 2014. [http://iso-ne.com/static-assets/documents/nwsiss/pr/2014/fca8\\_final\\_results\\_final\\_02282014.pdf](http://iso-ne.com/static-assets/documents/nwsiss/pr/2014/fca8_final_results_final_02282014.pdf)

<sup>10</sup> Id.



Niki Tsongas (MA-03)  
Member of Congress



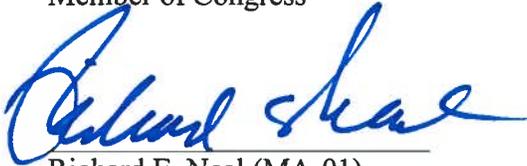
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